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EAST et ux. v. HYDE.

March 9, 1911.

[70 S. E. 508.]

1. Equity (§ 431*)—Decree—Construction.—Where, in a suit to cancel a contract for the sale of land, defendant interposed a cross-bill, seeking reformation and specific performance, and the decree rescinding the contract in accordance with the prayer of the original bill made no mention of a demurrer to the cross bill, it should be regarded as having been overruled.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 1049; Dec. Dig. § 431.* 4 Va.-W. Va. Enc. Dig. 502.]

2. Cancellation of Instruments (§ 47*)—Evidence—Sufficiency.—In a suit for the cancellation of a contract for the sale of land on the ground that defendant had failed to perform, evidence held to warrant a decree for complainant.

[Ed. Note.—For other cases, see Cancellation of Instruments, Cent. Dig. § 103; Dec. Dig. § 47.* 11 Va.-W. Va. Enc. Dig. 892; 13 Va.-W. Va. Enc. Dig. 546.]

3. Reformation of Instruments (§ 45*)—Evidence—Sufficiency.—Evidence given in support of a cross-bill for reformation of a contract for the sale of land and specific performance thereof held insufficient to warrant a decree for defendant.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. §§ 157-193; Dec. Dig. § 45.* 11 Va.-W. Va. Enc. Dig. 905; 9 Va.-W. Va. Enc. Dig. 866.]

Appeal from Circuit Court, Amelia County.

Suit by C. A. Hyde against W. C. East and wife. From a decree in favor of complainant, defendants appeal. Affirmed.

Jas. M. Quicke, Jr., and R. G. Southall, for appellants.

T. Freeman Epes, Epes & Epes, Sale, Mann & Tyler, and *Saml. W. Zimmer*, for appellee.

WICKHAM & NORTHROP v. TURPIN.

March 9, 1911.

[70 S. E. 514.]

Witness (§ 388*)—Impeachment—Inconsistent Statements—Foundation—Certainty of Inquiry.—Plaintiff, in an action for personal injuries, asked a witness for the defendant on cross-examination whether he had had a certain stated conversation with a person named, at a certain time and place. The plaintiff's impeaching witness, after beginning a narrative version of the conversation, was

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

asked questions which, with the categorical answers, covered the details of the warning question to defendant's witnesses. Held, that the warning question fully apprised the witness of his alleged inconsistent statements, and that the requirement of laying foundation was satisfied by the substantial identity between the statements in the foundation question and those proposed to be proved by the impeaching witness.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 1233-1242; Dec. Dig. § 388.* 13 Va.-W. Va. Enc. Dig. 966.]

2. Appeal and Error (§ 272*)—Exceptions—Necessity of Timely Exceptions.—Where defendant makes no motion to instruct the jury to disregard alleged improper remarks by plaintiff's counsel to the jury and takes no exception till nine days after verdict, when such remarks are made ground for a motion for new trial, the exception is too late.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1611-1619; Dec. Dig. § 272.* 5 Va.-W. Va. Enc. Dig. 368, 369.]

Appeal from Circuit Court, Chesterfield County.

Action by J. A. Turpin against Wickham & Northrop, receivers. Judgment for plaintiff, and defendants appeal. Affirmed.

A. B. Guigon, H. W. Anderson, and Mann & Mann, for appellants.

Smith, Moncure & Gordon, for appellee.

SOUTHERN RY. CO. v. MOSBY.

March 9, 1911.

[70 S. E. 517.]

1. Malicious Prosecution (§ 56*)—Want of Probable Cause—Burden of Proof.—The plaintiff has the burden of showing combined malice and want of probable cause.

[Ed. Note.—For other cases, see Malicious Prosecution, Cent. Dig. §§ 112-116; Dec. Dig. § 56.* 9 Va.-W. Va. Enc. Dig. 503.]

2. Malicious Prosecution (§ 19*)—Probable Cause.—Probable cause does not depend on the guilt or innocence of accused.

[Ed. Note.—For other cases, see Malicious Prosecution, Cent. Dig. § 25; Dec. Dig. § 19.* 9 Va.-W. Va. Enc. Dig. 498, 499.]

3. Malicious Prosecution (§ 18*)—Probable Cause—Criminal Prosecution.—Information received from an accomplice is sufficient to create probable cause if there is no reason to doubt its truth.

[Ed. Note.—For other cases, see Malicious Prosecution, Cent. Dig. §§ 23-38; Dec. Dig. § 18.* 9 Va.-W. Va. Enc. Dig. 499.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.